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SUBJECT: IMO: LEGAL COMMITTEE, REPORT OF THE 94TH
SESSION, LONDON, 20-24 OCTOBER 2008

[1](#)1. SUMMARY: The Legal Committee (LEG) of the International Maritime Organization (IMO) held its ninety-fourth session at the IMO Headquarters in London, 20-24 October 2008, under the chairmanship of Professor Lee-Sik Chai (Republic of Korea). The Legal Committee discussed, among other issues, provision of financial security in cases of abandonment of seafarers and for crew claims relating to death and personal injury, the development of a possible protocol to the Hazardous and Noxious Substances (HNS) Convention, and the fair treatment of seafarers in the event of a maritime accident. The Committee re-elected Professor Chai as Chairman for 2009 by acclamation and also elected Mr. Kofi Mbiah (Ghana) and Mr. Walter de Sa Leitao (Brazil) as Vice-Chairmen. END SUMMARY.

[1](#)2. Delegations from seventy-nine States, associate member Hong Kong, and twenty-two (22) other intergovernmental and non-governmental bodies, including the International Labor Organization (ILO), attended. The U.S. delegation consisted of representative Captain Chuck Michel, U.S. Coast Guard (USCG); alternate representative Lieutenant Amber Ward, USCG; and the following advisers: Mr. Charles Darr, USCG; Mr. Warren Marwedel, Maritime Law Association; and Mr. Douglas Stevenson, Seamen's Church Institute.

Provision of Financial Security

[1](#)3. ABANDONMENT AND CREW CLAIMS. The Committee noted the reports of the seventh and eighth sessions of the Joint IMO/ILO ad hoc Expert Working

Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers (EWG) held at the ILO Headquarters in Geneva, Switzerland in February and July 2008. The United States introduced a joint paper with France and the UK, document LEG 94/5/2, intended to increase awareness of the seriousness of the problems of abandonment and crew claims, and to encourage the members of LEG to support the EWG's development of a binding international instrument to provide adequate financial security in cases of abandonment and for crew claims relating to death and personal injury. Thirty delegations expressed their support for the paper and there was unanimity among those delegations that the EWG should continue its work and develop draft mandatory provisions. The USDEL also gave a presentation on abandonment of seafarers that was attended by approximately 100 delegates and drew nearly as many requests for materials. LEG 94 unanimously approved the EWG's revised terms of reference and encouraged the EWG to formulate appropriate recommendations to the Committee and to submit the outcome of the 9th session (2-6 March 2009) to LEG 95.

14. DEVELOPMENT OF A SINGLE MODEL COMPULSORY INSURANCE CERTIFICATE. The International Conference on the Removal of Wrecks, 2007, adopted a resolution which invited the Committee to develop a model for a single insurance certificate which may be issued by States Parties in respect of ships,

under the relevant IMO liability and compensation schemes. LEG 94 reviewed a draft prepared by the Secretariat and, noting that there would be several legal and practical issues to address and resolve, the Committee agreed to establish an informal correspondence group to work intersessionally.

Implementation of the HNS Convention:
development of a possible draft protocol

15. The Committee considered a draft Protocol to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention), which was adopted in 1996 but has not yet entered into force. Three key issues were previously identified as preventing the Convention from entering into force: (1) complexity regarding the reporting of packaged goods, (2) problems regarding contributions to the Liquefied Natural Gas (LNG) account, and (3) the non-reporting of contributing cargo. The draft Protocol was prepared by the HNS Focus Group and adopted by the 4th session of the 1992 International Oil Pollution Compensation (IOPC) Fund Administrative Council (acting on behalf of the 1992 IOPC Fund Assembly).

16. There was, in principle, general agreement that the best way to facilitate the Convention's entrance into force as soon as possible was to adopt an HNS protocol. The majority of delegations felt there was a need for a Protocol in order for the Convention to enter into force; however, some delegations were concerned about the problems it may pose for States that had already become Contracting Parties.

17. Packaged HNS. The Committee adopted the proposal introduced by IOPC Funds which involved the possibility to increase the limits of liability of the shipowner in cases where the damage was caused by packaged HNS, by both bulk and packaged

HNS originated from the same ship or, where it was impossible to assess whether the damage had been caused by packaged or bulk HNS from that ship. There was general agreement that the difficulties in collecting data and reporting on packaged HNS could be overcome by not requiring packaged goods to be included in contributing cargo and increasing shipowner liability as a compromise. Most delegations were prepared to accept a moderate increase in shipowner liability on packaged HNS, maintaining the principle of shared liability of shipowner and cargo interests.

¶18. Contributions to the LNG Account. The Committee approved a number of proposed amendments relating to LNG and also considered proposals for changing the entity liable for contributions to the LNG account from the titleholder to the receiver to eliminate inconsistencies with other contributing cargo regimes in the Convention and provide for a more equitable distribution of financial responsibility between developed and developing countries. A majority favored making the receiver liable in the first instance and giving the option

for its substitution by the titleholder through an agreement between titleholder and the receiver.

¶19. Submission of contributing cargo report. Although the Convention requires Contracting States to submit data on contributing cargoes received (when depositing the instrument evidencing consent to be bound and annually thereafter), few have done so. The Committee considered a proposal to require States to submit reports as an essential precondition for the validity of any expression of consent, and considered related proposals concerning remedies to ensure annual submission of reports up until and after the Convention's entry into force (e.g. refusal to accept expressions of consent, temporary suspension of contracting status). Most delegations that spoke expressed that submission of reports on contributions was an essential element of the Convention; in order to obtain compensation, Contracting States need to fulfill reporting obligations.

¶10. Diplomatic conference. The Committee did not reach consensus regarding the timing of a diplomatic conference, but agreed upon a recommendation to Council that a diplomatic conference be convened as soon as possible in 2010. While many delegations were satisfied with the text of the draft Protocol, as amended at LEG 94, many other delegations felt the Committee should further consider the draft at LEG 95.

Fair Treatment of Seafarers

¶11. LEG 93 agreed that the Joint IMO/ILO ad hoc Expert Working Group on Fair Treatment of Seafarers in the Event of a Maritime Accident should be reconvened for the limited purpose of monitoring the implementation of the Guidelines on fair treatment on the basis of the revised terms of reference, including the addition concerning the collection of information. As requested by the Committee at LEG 93, the IMO and ILO Secretariats consulted with each other and with the social partners with a view to determining an appropriate time and place for the next meeting, but no meeting has been scheduled.

¶12. The delegations of India and China expressed concern over the detention of the master and chief officer of the HEBEI SPIRIT in the Republic of

Korea (RoK). In response, RoK explained the judicial status of the case and suggested there may be a need to clarify certain aspects of the IMO/ILO Guidelines. These statements and several related statements were annexed to the report of the Committee.

¶13. A number of delegations endorsed the Secretary-General's statement that there was a need for proper and widespread implementation of the Guidelines, from the perspective of the seafarer and in view of the shipping industry's growing problem of manpower recruitment and retention. The United States remains unable to fully implement the Guidelines as presently drafted.

¶14. The Committee noted outcome of the 84th session of the Maritime Safety Committee (MSC 84) on the Casualty Investigation Code and the Safety of Life at Sea (SOLAS) Convention. MSC 84 adopted the Code as amended at MSC 83, as well as draft amendments to SOLAS chapter XI-I, making the Code mandatory for certain investigations conducted by flag States. Finding that the Code contains provisions that are in conflict with existing U.S. law and practice, the United States had reserved its position on the Code and objected to the SOLAS amendment.

Technical Cooperation

¶15. One of LEG's outputs for the 2008-09 biennium concerned processes for identifying qualified legal experts who may be able to provide assistance to developing countries in the area of maritime legislation. The Secretariat advised the Committee of ongoing efforts to expand the pool of experts, and submitted for LEG's consideration proposed measures designed to help IMO identify and maintain a list of qualified legal experts.

LEG Work Program

¶16. At LEG 93, the Committee set up an informal working group to consider what provisions of the MSC-MEPC guidelines on the methods of work might appropriately be incorporated to LEG's guidelines on methods of work. The Committee reviewed the group's recommendations at LEG 94 and intends to make a final decision on adoption of new guidelines at LEG 95.

Issues Related to the 2001 Bunkers Convention

¶17. In response to a request from the delegation of Japan, the observer delegation of the Protection and Indemnity (P&I) Clubs expressed a readiness to assist in possibly collecting, in consultation with other organizations, information on incidents of fuel oil spills that exceeded the limits of the shipowner's liability under the Bunkers Convention and other international conventions.

¶18. The P&I Clubs and the International Chamber of Shipping submitted a paper concerning the issuance of compulsory insurance certificates by States Parties to the Bunkers Convention to ships flying the flag of non-Party States. An increasing number of certificates will have to be issued on expiration of the present cover on 20 February 2009. Several States Parties intervened to indicate their willingness to issue certificates against the presentation of blue cards, including electronic

cards, and also for the period of entry into force of the Bunkers Convention, 21 November 2009, and 20 February 2009.

¶19. The delegation of the Marshall Islands raised 2 issues for the Committee's consideration: (1) insurance certificates for bareboat charter

registered vessels, and (2) the legal status of offshore drilling units (the Convention does not discriminate between propelled and non-propelled ships). The United States intervened in support of Marshall Island on both issues. As both issues raise complex questions of law, any further consideration will require submission of documents.

Next Session

¶20. The next session of the Legal Committee is scheduled for 30 March to 3 April 2009.

TUTTLE